



Setti D. Warren  
Mayor

## CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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Public Hearing Date:	April 13, 2010
Land Use Action Date:	June 15, 2010
Board of Aldermen Action Date:	June 21, 2010
90-Day Expiration Date:	July 12, 2010

DATE: April 9, 2010

TO: Board of Aldermen

FROM: Candace Havens, Acting Director of Planning and Development  
Benjamin Solomon-Schwartz, Senior Planner

SUBJECT: #75-10 CALEB P. NELSON & SANDRA J BLISS petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NON-CONFORMING STRUCTURE to demolish and existing deck and screened porch and add a 3-story addition onto the back of an existing 3-story single-family dwelling at 39 DEVONSHIRE ROAD, Ward 5, Waban, on land known as Sec 55, Blk 40, Lot 3 containing approx 10,400 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 3021(a)(2)b), (b), 30-15 Table 1 of the City of Newton Rev Zoning Ord, 2007.

CC: Mayor Setti D. Warren

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



## **EXECUTIVE SUMMARY**

The petitioners propose to add a three-story addition (basement and two additional stories) to the rear of their existing house that will increase the floor area of the house from 3,948 square feet to 5,004 square feet, from 0.38 to 0.48 FAR. If the basement were excluded from FAR, the addition would increase the house from 2,603 square feet to 3,093 square feet, increasing the FAR from .25 to .297, which is allowed by right in this zone. An FAR of .297 would be at the higher end of the range of FARs of structures in the neighborhood, but would be lower than the FAR of several structures. The 2007 *Newton Comprehensive Plan* encourages preservation of existing residential neighborhoods, and the Planning Department believes that modestly-sized additions can help to preserve the character of existing neighborhoods, while allowing occupants the flexibility to meet the housing needs of today's families. This petition addresses those needs by modifying an existing single-family home with an addition in the rear, while keeping in scale with the other houses in the immediate neighborhood.



*View of existing house at 39 Devonshire Road*

## I. SIGNIFICANT ISSUES FOR CONSIDERATION

When considering this request, the Board should consider whether the increase in FAR is consistent with and not in derogation of the size, scale and design of other structures in the immediate neighborhood and whether it is not more detrimental than the existing nonconforming structure.

## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The property is located in Waban, several blocks from the Quinobequin Road and the Charles River. It is located within a Single Residence 2 District (*SEE ATTACHMENTS "A" AND "B"*). The neighborhood is primarily characterized by single-family detached residences. This neighborhood was originally subdivided for development of single-family homes in the 1920s, with most buildings in the Tudor Revival and Colonial Revival styles. However, the three houses adjacent to the petitioner's property along Edgefield Road were constructed in the 1950s and 1960s in split level and ranch styles. With several exceptions, the lots in the vicinity of this property are between 9,000 and 15,000 sq. ft. The lot size of 39 Devonshire Road is in the middle of this range. The floor area ratios of the houses in the neighborhood range between 0.11 and 0.38 (*SEE ATTACHMENT "C"*).

### B. Site

The 10,400 sq. ft. site currently contains one single-family home. The site slopes downwards towards the back of the lot. The existing structure is set into the hillside such that there is access to the basement garage at-grade from the rear. The petitioner's house has the highest floor area ratio in the neighborhood because the basement garage is counted in the gross floor area due to the slope of the lot.



## III. PROJECT DESCRIPTION AND ANALYSIS

### A. Land Use

No change of use is proposed.

## B. Building and Site Design

The existing house is a brick two-story Tudor Revival house. While the basement counts as a full story according to the Zoning Ordinance, thus increasing the FAR, only two stories are visible from Devonshire Road. The petitioners propose a three-story addition (basement and two additional stories) to the rear of the house that will increase the floor area of the house from 3,948 square feet to 5,004 square feet, from 0.38 to 0.48 FAR. If the basement were excluded from FAR, the addition would increase the house from 2,603 square feet to 3,093 square feet, increasing the FAR from .25 to .297, which is allowed by right in this zone. An FAR of .297 would be at the higher end of the range of FARs of structures in the neighborhood but would be lower than the FAR of several structures.



The addition will not increase the amount of impervious surface on site because it will be on top of an existing asphalt driveway. The addition will largely occur within the footprint of an existing deck, including approximately 500 additional square feet in the basement and on the first floor each. Approximately 52 square feet will be added to the top floor. A new deck will be constructed on the first floor; the majority of the deck will cover an existing asphalt driveway, and a portion will cover an existing grassy area.

The addition will complement the style of the existing house with the use of shingles and gables that are found on the existing facades.



C. Landscape Screening and Lighting

The petitioners have not proposed any additional landscape screening as part of the project. Due to the modest scale of this project, additional landscaping should not be necessary.

IV. COMPREHENSIVE PLAN

The 2007 *Newton Comprehensive Plan* encourages preservation of existing neighborhoods. The Planning Department believes that modestly-sized additions can help to preserve the character of existing neighborhoods while allowing occupants the flexibility to meet the housing needs of today's families. This renovation will help ensure that the house will be usable for current and future residents.

V. TECHNICAL REVIEW

A. Technical Considerations (Section 30-15). The Zoning Review Memorandum, dated February 25, 2010 (*SEE ATTACHMENT "D"*), provides an analysis of the proposal with regard to Section 30-15, Table 3. A special permit is required for an addition to an existing structure that is nonconforming with regard to FAR. The "temporary" additional FAR relief, provided by the August 10, 2009, amendment to the City's Zoning Ordinance (*Ordinance No.Z-51*), is not sufficient to allow this project as of right. In addition, the project requires a special permit to increase the nonconformity of the structure with regard to the side setback.

B. Other Reviews

1. Engineering. While the Associate City Engineer has reviewed plans and has determined that drainage improvements are not required by City ordinance because the project will result in a decrease in impervious surface area, he recommends using rain barrels to capture and reuse rainwater on-site (*SEE ATTACHMENT "E"*). The petitioner is current proposing to use a drywell to capture rainwater but is willing to consider rain barrels as well. Either technology would be an appropriate solution for reducing runoff and minimizing potential flooding on the property. According to Anne Phelps, Senior Environmental Planner, no review by the Conservation Commission staff is necessary because the project will not affect any conservation resource areas.
2. Fire Department. Fire accessibility review is not required for an addition to a single-family home.

VI. ZONING RELIEFS SOUGHT

Based on the completed zoning review, dated January 11, 2010 (*SEE ATTACHMENT "D"*),

the petitioner is seeking approval through or relief from:

- Section 30-15(u)(4), to construct an addition to an existing house that exceeds the allowable FAR
- Section 30-21(b), to increase the nonconformity of structure that currently exceeds FAR and to increase the nonconformity of the structure with regard to the side setback
- Section 30-23, for site plan approval
- Section 30-24, for approval of special permit

VII. Summary of Petitioner's Responsibilities

This petition is currently complete.

**ATTACHMENTS**

<b>ATTACHMENT A:</b>	<b><i>Zoning Map</i></b>
<b>ATTACHMENT B:</b>	<b><i>Land Use Map</i></b>
<b>ATTACHMENT C:</b>	<b><i>Neighborhood Density Analysis</i></b>
<b>ATTACHMENT D:</b>	<b><i>Zoning Review Memorandum, dated February 25, 2010</i></b>
<b>ATTACHMENT E:</b>	<b><i>Engineering Memorandum, dated March 31, 2010</i></b>
<b>ATTACHMENT F:</b>	<b><i>Draft Board Order</i></b>

# Attachment A Zoning Map

## 39 Devonshire Road and Vicinity

City of Newton,  
Massachusetts

### Legend

- Building Outlines
- Single Res. 1
- Single Res. 2
- Single Res. 3
- Business 1
- Business 2
- Business 4
- Business 5
- Limited Manufacturing
- Manufacturing
- Multi-Res. 1
- Multi-Res. 2
- Multi-Res. 3
- Multi-Res. 4
- Mixed Use 1
- Mixed Use 2
- OS/Rec.
- Public Use
- Surface Water



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

0 25 50 100 150 Feet

MAP DATE: March 22, 2010

# Attachment B Land Use Map

## 39 Devonshire Road and Vicinity

City of Newton,  
Massachusetts

### Legend

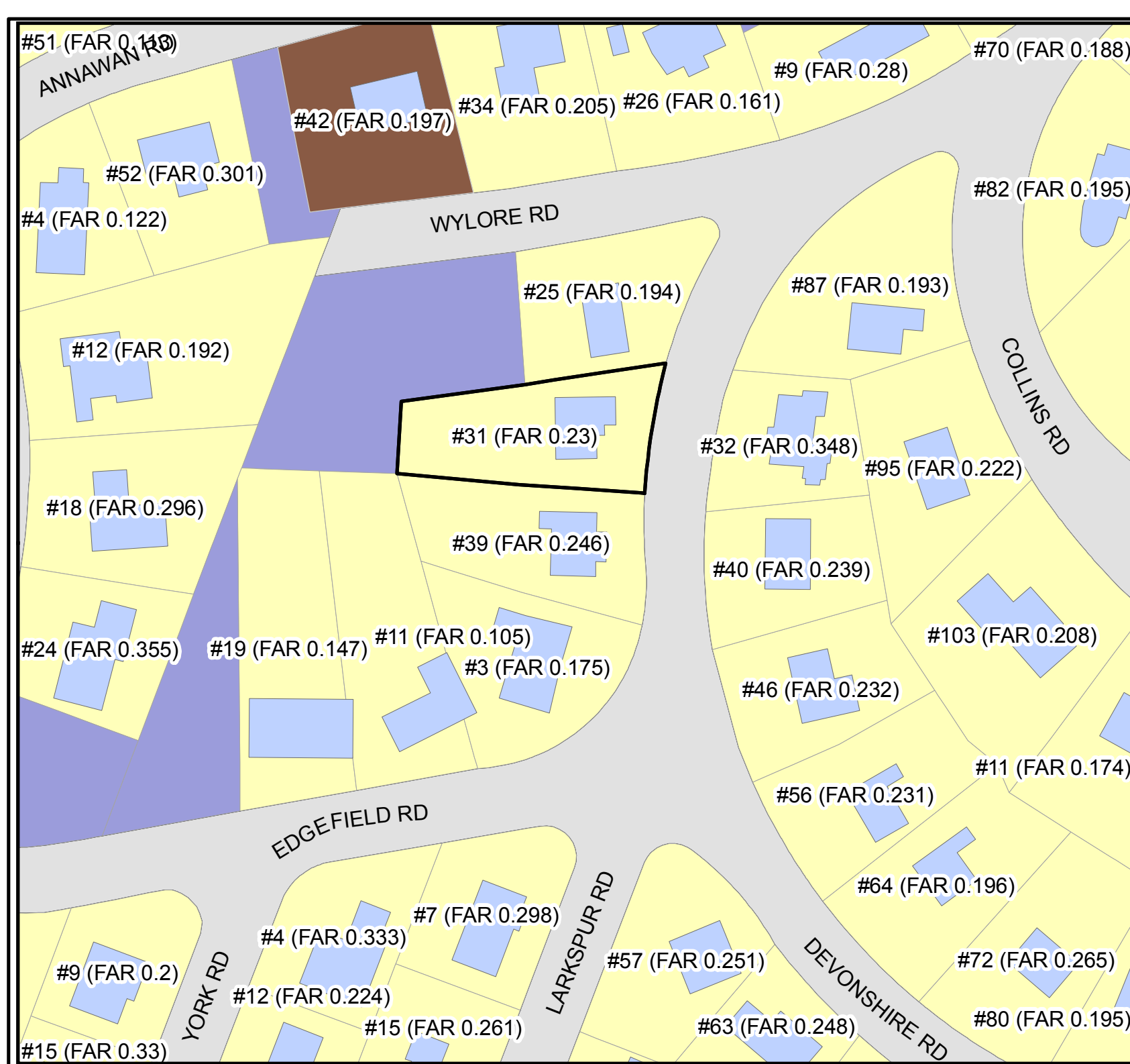
- Building Outlines
- Single Family Residential
- Two Family Residential
- Condominiums
- Other Residential
- Mixed Use
- Commercial
- Industrial
- Vacant Land
- Golf Course
- Open Space
- Private Educational
- Nonprofit Organizations
- Public Housing
- Tax Exempt
- Unspecified
- Surface Water



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0 25 50 100 150 Feet

MAP DATE: March 22, 2010





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## ***Zoning Review Memorandum***

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Dt: February 25, 2010

To: John Lojek, Commissioner of Inspectional Services

Fr: Eve Tapper, Chief Zoning Code Official  
Candace Havens, Interim Director of Planning and Development

Cc: Carice Pingnot, Catalano Architects, representing Drs. Caleb and Sandra Nelson  
Ouida Young, Associate City Solicitor

**RE: Request to allow an increase in FAR.**

<b>Applicant: Drs. Caleb and Sandra Nelson</b>	
<b>Site:</b> 39 Devonshire Road	<b>SBL:</b> Section 55, Block 40, Lot 3
<b>Zoning:</b> SR-2	<b>Lot Area:</b> 10,400 square feet
<b>Current use:</b> Single-family residence	<b>Proposed use:</b> Single-family residence

**Background:**

1. The subject property consists of a 10,400 square foot lot currently improved with a single-family residence. The applicants are proposing to demolish an existing deck and screened porch and add a three-story addition onto the back of the house. The following review is based on plans and materials submitted to date as noted below.

**Plans and materials reviewed:**

- o Zoning Narrative
- o "X1.1 Existing Plans," dated December 17, 2010, neither signed nor stamped by a licensed professional
- o "X2.1 Existing Elevations," dated December 17, 2010, neither signed nor stamped by a licensed professional
- o "A1.0 Site Plan," dated December 17, 2010, neither signed nor stamped by a licensed professional
- o "A1.1 Proposed basement and first floor plans," dated February 10, 2010, neither signed nor stamped by a licensed professional
- o "A1.2 Proposed second floor plan," dated December 17, 2010, neither signed nor stamped by a licensed professional
- o "A2.1 Proposed East and West Elevations," dated December 17, 2010, neither signed nor stamped by a licensed professional
- o "A2.2 Proposed North and South Elevations," dated December 17, 2010, neither signed nor stamped by a licensed professional
- o "X3.1 Building Sections," dated December 17, 2010, neither signed nor stamped by a licensed professional
- o "Site Plan, 39 Devonshire Road, Newton, Massachusetts," dated 1-26-2010, signed and stamped by John R. Hamel, Professional Land Surveyor

**Administrative determinations:**

2. The property is in the SR-2 zone and must comply with the dimensional standards of Section 30-15, Table 1 for a pre-1953 lot (see chart below).

<b>SR-2 Zone</b>	<b>Required/Allowed</b>	<b>Existing</b>	<b>Proposed</b>
Lot size	10,000 sq. ft.	10,400 sq. ft.	No change
Frontage	80 feet	85 feet	No change
Setbacks <ul style="list-style-type: none"><li>• Front</li><li>• Side</li><li>• Rear</li></ul>	25 feet 7.5 feet 15 feet	26.1 feet <b>4.2 feet</b> 70.7 feet	No change <b>No change</b> 53 feet
FAR	.3	<b>.38</b>	<b>.48</b>
Building Height	30 feet	27.9 feet	No change
Maximum Stories	2.5	<b>3</b>	<b>No change</b>
Max. Lot Coverage	30%	17%	18.8%
Min. Open Space	50%	66.6%	65.9%

3. The existing structure is a legally nonconforming three-story building. The lower level does not meet the City's definition of a basement and is counted as an existing story. A three-story addition is permitted in this case since the applicants are not proposing to add a new third story to the building only to expand the existing third floor.
4. The subject property is also legally nonconforming with respect to Floor Area Ratio (FAR). Again, this nonconformity stems from the fact that the lower level of the existing structure is considered a full story and is therefore included in the FAR calculation. The proposed addition will increase this nonconformity. The proponents need a Special Permit from the Board of Aldermen under Sections 30-21(a)(2)(b) and 30-21(b) to increase the FAR.
5. The existing structure is legally nonconforming with respect to side setback. The proposed addition will increase this nonconformity by a total of approximately nine square feet (three square feet on each floor). Because the structure is already less than five feet from the side property line, the project is not eligible to be considered de minimus under Section 30-21(c). Instead, the applicants must obtain a Special Permit from the Board of Aldermen under Sections 30-21(a)(2)(b) and 30-21(b).
6. The existing rear shed dormer is wider than 50% of the exterior wall of the story below. This situation is legally nonconforming per Section 30-15(t)(a). The proposed plans increase this dormer. The applicants must obtain a Special Permit from the Board of Aldermen under Sections 30-21(a)(2)(b) and 30-21(b) to construct the dormer as proposed.

7. See “Zoning Relief Summary” below:

<b><i>Zoning Relief Summary</i></b>		
<b><i>Ordinance</i></b>	<b><i>Site</i></b>	<b><i>Action Required</i></b>
§30-15, Table 1 30-21(a)(2)(b), 30-21(b)	Increase nonconformity with respect to FAR	SP per §30-24
§30-15, Table 1 30-21(a)(2)(b), 30-21(b)	Increase nonconformity with respect to side setback	SP per §30-24
§30-15(t)(a), 30-21(a)(2)(b), 30-21(b)	Increase nonconforming dormer	SP per §30-24

**CITY OF NEWTON  
ENGINEERING DIVISION**

**MEMORANDUM**

To: Alderman Ted Hess-Mahan, Land Use Committee Chairman

From: John Daghljan, Associate City Engineer

Re: Special Permit – 39 Devonshire Road

Date: March 31, 2010

CC: Lou Taverna, PE City Engineer (via email)  
Candice Havens, Acting Director of Planning (via email)  
Linda Finucane, Associate City Clerk (via email)  
Benjamin Solomon Schwartz (via email)

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In reference to the above site, I have the following comments for a plan entitled:

*Site Plan  
39 Devonshire Road  
Newton, MA  
Prepared by: Snelling & Hamel Associates, Inc.  
Dated: January 26, 2010*

Drainage:

1. Based upon a site visit the proposed addition will be placed over the area that is currently paved with asphalt, since no new impervious is being added, drainage improvements are not warranted. However I would recommend that rain barrels be utilized to help lessen the amount of runoff from this property, keeping in mind that the net increase is zero, the use of the rain barrels would be beneficial to re-use water for lawns and gardens.
2. The applicant should check with the Conservation Commission Agent to ensure that the proposed work does not require review by the Commission, in concert with the construction an approved type of siltation control should be utilized to minimize any migration of excavated soils to neighboring homes and properties.

Sewer & Water:

If the existing dwelling is to be renovated or gutted by more than 50%, then both water and sanitary sewer services must be updated, the architect of record will have to submit documentation to determine if this threshold is triggered to the Inspectional Service Department during the Building Permit application.



General:

1. As of January 1, 2009, all trench excavation contractors shall comply with Massachusetts General Laws Chapter 82A, Trench Excavation Safety Requirements, to protect the general public from unauthorized access to unattended trenches. Trench Excavation Permit required. This applies to all trenches on public and private property. *This note shall be incorporated onto the plans*
2. All tree removal shall comply with the City's Tree Ordinance.
3. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility is question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*
4. The applicant will have to apply for Street Opening, Sidewalk Crossing, and Utilities Connecting permits with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*
5. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.
6. Prior to Occupancy permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading. *This note must be incorporated onto the site plan.*
7. If a Certificate of Occupancy is requested prior to all site work being completed, the applicant will be required to post a Certified Bank Check in the amount to cover the remaining work. The City Engineer shall determine the value of the uncompleted work. *This note must be incorporated onto the site plan.*

Note: If the plans are updated it is the responsibility of the Applicant to provide all City Departments [Conservation Commission, ISD, and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.

DRAFT  
#75-10

CITY OF NEWTON  
IN BOARD OF ALDERMEN  
May 3, 2010

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to extend a nonconforming structure with respect to Floor Area Ratio and with respect to the side setback in order add a three-story rear addition, as recommended by the Land Use Committee for the reasons given by the Committee through its chairman Alderman Ted Hess-Mahan:

1. The proposed extension of a nonconforming structure will not be substantially more detrimental to the neighborhood than the existing structure for the following reasons:
  - a. The rear addition has been designed in keeping with the architecture and rooflines of the existing house and will be minimally visible from public property.
  - b. The proposed FAR exceeds the by-right threshold because the property slopes towards the rear and, therefore, the floor area within the basement counts towards FAR.
  - c. Increasing the already nonconforming FAR from .38 to .48 (where an FAR of .3 is allowed by right) is appropriate in this neighborhood context, as the house will remain consistent with and not in derogation of the size, scale and design of other structures in the surrounding neighborhood, and the property complies with ratios for lot coverage and open space.
  - d. The modest addition of nine square feet within the side setback will be no closer to the lot line than the front portion of the house which is currently 4.2 feet from the property line and will not be more detrimental than the existing structure.
2. The petitioners plan to use either a drywell or rain barrels to capture all roof runoff from the proposed addition.
3. The proposed modestly scaled additions are consistent with the *2007 Comprehensive Plan*, as they will help meet the lifestyle needs of today's families while maintaining the character of the neighborhood.

PETITION NUMBER: #75-10

PETITIONER: Caleb P. Nelson and Sandra J. Bliss

LOCATION: 39 Devonshire Road, Section 55, Block 40, Lot 3  
containing approximately 10,400 sq. ft. of land

OWNER: Caleb P. Nelson and Sandra J. Bliss

ADDRESS OF OWNER: 39 Devonshire Road, Newton, MA 02468

TO BE USED FOR: Rear addition to an existing single-family house

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §30-21(a)(2)(b), 30-21(b) & 30-15(u)(4) to increase the nonconformity of the existing structure with respect to FAR; §30-23 for site plan approval; and §30-24(d) for special permit approval

ZONING: Single Residence 2 District

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
  - Site Plan for 39 Devonshire Road, Newton Massachusetts, dated January 26, 2010, and signed and stamped by John R. Hamel, Professional Land Surveyor
  - A set of plans for the Nelson Residence, 39 Devonshire Road, Waban, MA 02468, prepared by Catalano Architects, 115 Broad Street, Boston, MA
    - Sheet A-1.1, Proposed Basement and First Floor Plans, dated March 10, 2010, signed and stamped by Thomas Catalano, Registered Architect
    - Sheet A-1.2, Second Floor Plan
    - Sheet A-2.1, East and West Proposed Elevations
    - Sheet A-2.2, North and South Elevations
2. During construction, an approved type of siltation control should be used to minimize the migration of excavated soils to neighborhood homes and properties.
3. No building permit shall be issued pursuant to this special permit/site plan approval until the petitioner has:

- a. recorded a certified copy of this board order for the approved special permit/site plan with the Registry of Deeds for the Southern District of Middlesex County.
  - b. filed a copy of such recorded board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
  - c. obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
- 4. No occupancy permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
  - a. filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect or engineer certifying compliance with Condition #1.
  - b. submitted to the Department of Inspectional Services, and the Department of Planning and Development a final as-built survey plan in digital format.